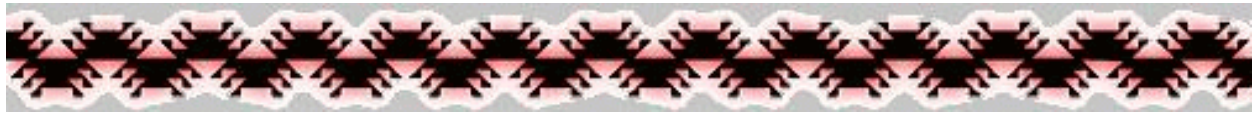




TITLE 67A OF THE HOOPA TRIBAL CODE

PURPOSE: Disclosure Act

ADMINISTRATIVE RECORD: Adopted February 6th, 2003



TITLE 67
HOOPA TRIBAL DISCLOSURE ACT
HOOPA VALLEY TRIBE
HOOPA, CALIFORNIA

ORDINANCE NO: 02-03

DATE APPROVED: February 6, 2003

SUBJECT: TO ESTABLISH PROCEDURES FOR THE DISCLOSURE AND PROTECTION OF VARIOUS TYPES OF INFORMATION CONTROLLED BY THE HOOPA VALLEY TRIBE

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Sections 1(a), (k) and (l) of this Constitution authorized the Hoopa Valley Tribal Council to administer tribal property, adopt ordinances, and safeguard the general welfare of the Tribe, and

WHEREAS: Efficient operation of tribal government requires a systematic and consistent procedure for the release of information controlled by the Tribal Council, its departments and entities, and

WHEREAS: In the interest of establishing a fair and non-political procedure for the release of certain information and for establishing a process to safeguard certain other information, the Tribal Council has directed that a procedure for access to public records is necessary;

NOW, THEREFORE, BE IT RESOLVED: That the Hoopa Valley Tribal Council hereby enacts this ordinance as Title 67 of the Hoopa Valley Tribal Code.

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SECTION 1. SHORT TITLE

The short title of this enactment shall be the Hoopa Tribal Disclosure Act.

SECTION 2. PURPOSES

The purposes of this Act are to establish procedures for disclosure of records that is in the public interest because of its contribution to the memberships understanding of the operations and activities of the Tribe, while at the same time, safeguarding individuals against invasions of personal privacy and protecting the political and legal status of the Hoopa Valley Tribe. Nothing in this Act shall be interpreted to prevent the lawful enforcement of other Tribal laws or to authorize the withholding of information from the Tribal Council.

SECTION 3. ACCESS TO TRIBAL RECORDS

3.1 Application

This Act shall apply to all operations and activities of the Hoopa Valley Tribe, including, without limitation, all entities and associations established by charter or otherwise authorized under the Constitution and Bylaws of the Hoopa Valley Tribe.

3.2 Tribal Records and Disclosure

- 3.2.1 As used in this ordinance “Tribal Records includes all books, papers, maps, photographs, machine-readable materials, electronic mail, or other documentary materials, regardless of physical form or characteristics, made or received by the Hoopa Valley Tribe or its entities under law or in connection with the transaction of tribal business and preserved or appropriate for preservation by the entity as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Hoopa Valley Tribe or because of the informational value of data in them. Records in the possession of the Hoopa Valley Tribe or its entities where a non-tribal government or agency retains control over the records, or where the records are the personal materials of tribal employees are not included.
- 3.2.2 Except for previously provided copies of tribal records which the secretary or an authorized representative demonstrates are clearly required to be maintained as part of the Department of the Interior’s record keeping system, tribal records shall not be deemed federal records, and shall not be subject to the Privacy Act, 5 U.S.C. Section 552a, or Freedom of Information Act, 5 U.S.C. 552.
- 3.2.3 The Tribe shall maintain a record keeping system and provide reasonable access to records to the Secretary or an authorized representative, which permits the Department of the Interior to meet its minimal legal record keeping program requirements under the Federal Records Act, 44 U.S.C. Section 3101, et seq., and which allow for retrocession of the Compact in whole or in part pursuant to Section 13 of Article II of the Compact. Such minimal record keeping shall not require more stringent standards than those established by Federal law and under the Code of Federal Regulations for each program, activity, function or service compacted by the Tribe for which the United States retains trust responsibility.

- 3.2.4 The Tribe, in accordance with its published procedures, shall make available for inspection and copying Tribal records in any form, including:
- (a) final opinions made in the adjudication of cases;
 - (b) those resolutions, enactments and statements of policy and final actions which have been adopted by the Tribe;
 - (c) administrative tribal manuals that affect a member of the public;
- 3.2.5 The Tribe shall release litigation support records to non-party litigants only to further the interests of the Tribe, and only upon the signature of the Chairman, with approval by the Tribal Council. Such records include documents that have been or will be used by the Tribe as support in litigation. Except as specifically authorized, no such records shall be released to any person who is, or is likely to become, a party adverse to the Tribe in any present or future litigation.
- 3.2.6 To the extent required to prevent a clearly unwarranted invasion of personal privacy, the Tribe may delete identifying details when it makes available or publishes any record.
- 3.2.7 Each division or entity, upon a written request for records which describes the requested records with reasonably specific manner and upon compliance of the requestor with Sections 4.3-4.5 (concerning the fees and established procedure), shall make the records available to any tribal member.
- 3.2.8 The Tribe, division or entity, upon receipt of a request for records that satisfies section 3.2.7 shall:
- (a) issue a determination within ten (10) working days (excluding Saturdays, Sundays and all tribal holidays) after the receipt of any request for records, whether to comply with such request in whole or in part, and shall immediately notify the person making such request of such determination, the reasons therefore, and of the right to appeal to the Tribal Council any determination not to provide the requested records. Any Appeal shall be made within 10 working days of receipt of the determination on the records request by delivering to the Executive Secretary a Request for Appeal including all supporting documentation to be considered on the appeal by the Tribal Council;
 - (b) issue a determination by the Tribal Council with respect to any appeal within twenty (20) days (excluding Saturdays, Sundays and all legal holidays) after the receipt of a written appeal. If on appeal, the denial of information is upheld, the Tribal Council shall notify the person making the request of the provisions for judicial review of that determination under section 3.2.9.
 - (c) In unusual circumstances, the Tribe may extend the time limits proscribed in clauses (a) and (b) with notice to the person making the request, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. As used in this subparagraph, unusual circumstances means-

- (1) the need to search for and collect the requested records from facilities or other establishments that are separate from the office processing the request;
 - (2) the need to search for, collect and appropriately examine a voluminous amount of records which are demanded in a single request; or
 - (3) the need for consultation among two or more components of the Tribe having a substantial interest in the determination of the request.
- 3.2.9 On complaint, by a requester, division or entity the tribal court shall have jurisdiction to decide the lawfulness of withholding a properly requested record and to order the production of any record improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of the record in camera to determine whether such record shall be withheld under any of the exemptions set forth in this Ordinance.

3.3 Exemptions from disclosure

Section 3 of this Act does not direct disclosure of or apply to records that are:

- 3.3.1 related solely to internal rules and practices of the Tribe and tribal divisions;
- 3.3.2 trade secrets of the tribe, including active business documents, financial statements and bid packages, which could jeopardize the competitive position of the Tribe;
- 3.3.3 would be privileged at common law;
- 3.3.4 records of investigations compiled for law enforcement purposes, except to the extent that non-disclosure of such information would deprive a person of a fair trial;
- 3.3.5 personnel, medical, enrollment, and any other similar records, which would constitute a clearly unwarranted invasion of personal privacy; or
- 3.3.6 intertribal memos, internal records, letters or draft materials not yet final and not approved for public release.
- 3.3.7 disclosed to only those officers, employees and agents of the Tribe who have a need for the record in the performance of their duties;
- 3.3.8 disclosed pursuant to a valid court order.

SECTION 4. REQUEST PROCEDURES

4.1 Establishment of Record Keeping System

It is the goal of the Tribal Council that a filing and record keeping system be established and maintained, and that such a system shall include procedures for confidentiality, retrieval and

updating such records. The Tribal Archivist is authorized to prepare and present records management policies and procedures necessary for implementation of this Ordinance which shall become binding and enforceable upon Tribal Council approval. The Tribal Archivist shall insure that adopted policies and procedures are maintained, updated and adhered to and shall immediately report to the Tribal Chairman and the Tribal Council any activities which place records in jeopardy of loss or destruction along with a recommendation for immediate corrective action to preserve or protect the records. The system shall include all records and information of the Tribe, its Council, its departments and its entities.

4.2 Addressing Requests for Information

Requests for records shall be directed to the tribal officer in charge of the division maintaining the requested records; a copy of the request shall also be sent to the Tribal Chairman.

4.3 Availability of Information --inspection, copying, and exceptions

- 4.3.1 When a request has been approved, the member may make an appointment to inspect and copy the records so approved at the tribal offices during regular business hours or may pay to have copies sent to him or her;
- 4.3.2 The Tribal Chairman, acting in his discretion (except where otherwise directed by the Tribal Council), may determine that a record which is exempt from disclosure under Section 3 shall be made available under terms and conditions as he may set.
- 4.3.3 After 30 days advance notice, the Tribe shall provide the Secretary of Interior with reasonable access to such records maintained by the Tribe as required by Federal law in order to meet minimum legal record keeping requirements under Sections 3101 through 3106 of Title 44 of the United States Code.

4.4 Charges for Search and Production

4.4.1 Definitions

- (a) the term "direct costs" means expenditures that the Tribe actually incurs in searching for and duplicating documents to respond to a request. Direct costs include, for example, the salary of the employee performing the work and the cost of operating duplicating machinery
- (b) the term "search" includes all time spent looking for material that is responsive to a request, including a line-by-line or page-by-page identification of material within documents;
- (c) the term "duplication" refers to the process of making a copy of the document necessary to respond to a request;
- (d) the term "review" refers to the process of examining documents located in response to a request to determine whether any portion of any document located is permitted to be withheld.

- (e) the term “tribal member” shall mean any Indian Person enrolled or eligible for enrollment in the Hoopa Valley Tribe.
- (f) the term “non-member Indian” shall mean any Indian person who is not enrolled and not eligible for enrollment in the Hoopa Valley Tribe, but is a direct descendent of a tribal member.
- (g) the term “non-member” shall mean any person who is not enrolled and not eligible for enrollment in the Hoopa Valley Tribe.
- (h) the term “non-tribal” shall mean any agency, organization or office other than the Hoopa Valley Tribe.

4.4.2 Fees to be charged -- The Tribe will charge fees that recoup the full allowable direct costs it incurs in responding to a non-member or non-tribal request, unless otherwise provided by the Tribal Council or Tribal Council approved regulations. Such fees may be as follows:

- (a) Manual search for records. The Tribe will charge at the salary rate of the employee(s) making the search;
- (b) Computer search for records. The Tribe will charge the actual direct cost of providing the service;
- (c) Review of records. The Tribe will charge at the salary rate of the employee(s) conducting the review of records to determine if any of the records may be withheld;
- (d) Duplication of records. The Tribe will charge for duplication of records per page at a rate set annually by the Tribal Chairman; provided, that minimal duplication charges may be waived upon a showing of good cause.

HOOPA TRIBAL DISCLOSURE ACT

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify that the Hoopa Valley Tribal Council is composed of eight members of which eight (8) were present, constituting a quorum, at a regular meeting thereof, duly and regularly called, noticed, convened and held this sixth (6th) day of February, 2003; and that this Ordinance was adopted by a vote of seven (7) FOR and zero (0) AGAINST, and that said Ordinance has not been rescinded or amended in any way.

Dated this sixth (6th) day of February, 2003.

Clifford Lyle Marshall Sr., Chairman
Hoopa Valley Tribal Council

ATTEST:

Darcy A. Miller, Executive Secretary
Hoopa Valley Tribal Council